FOR ARGUMENT

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No. 95-992

In the Supreme Court of the United States

OCTOBER TERM, 1995

TURNER BROADCASTING SYSTEM, INC., ET AL.,
APPELLANTS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL APPELLEES

WALTER DELLINGER
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

3 pp

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This supplemental memorandum is submitted pursuant to this Court's Rule 25.5.

In our brief on the merits in this case (at p. 41), we noted, with respect to the feasibility of A/B switches and antennas as an alternative to must-carry, that "Congress found, when it investigated the matter, that the great majority of households served by cable do not have roof-top antennas; indeed, zoning ordinances and restrictive covenants often prohibit installation of such antennas." In Section 207 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 114, Congress directed the Federal Communications Commission (FCC) to promulgate regulations "to prohibit restrictions that impair a viewer's

ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals[.]"

On August 6, 1996, the FCC promulgated regulations in which it preempted any state or local law or regulation, and prohibited any private covenant, that "impairs the installation, maintenance, or use of * * * an antenna that is designed to receive television broadcast signals." Report and Order, *Preemption of Local Zoning Regulation*, FCC 96-328, at 50 (Aug. 6, 1996) (to be codified at 47 C.F.R. 1.4000(a)(3)). The regulations provide exceptions for state and local laws necessary to accomplish clearly defined safety objectives, or to preserve a historic district listed on the National Register of Historic Places. *Id.* at 50-51 (to be codified at 47 C.F.R. 1.4000(b)).

For the convenience of the Court, we have lodged with the Clerk copies of the FCC's Report and Order setting forth and discussing the new regulations. We have also served copies of the Report and Order on the parties.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General

SEPTEMBER 1996